



Performance-based Contracts

Several state agencies have been working very closely with the Governor's Office to fully understand the requirements of [Executive Order 10-07](#) for performance-based contracts.

General Administration, the Office of Financial Management and the departments of Information Services and Printing have worked together to provide guidance and assistance to meet the objectives of the executive order. Please let us know if you have any questions regarding performance-based contracting related to goods and services.

Background

Part of this year's budget process emphasized tying spending in state contracts to positive results. Agencies were asked to identify activities that could benefit from the use of a performance contract.

Although many agencies are already incorporating performance elements into their contracts, Governor Chris Gregoire wants to strengthen performance-based contracting efforts across state government.

Through the executive order, the governor has directed all state cabinet agencies to include performance-based contracting standards in all new contracts for products and services, and to review existing contracts prior to renewal and update as necessary to reflect these standards. The order also requires all state cabinet agencies to ensure performance-based contracts are actively managed to meet performance-based standards.

As part of the order, the governor asked the State Auditor's Office to evaluate current contract management practices (management and monitoring of performance-based contracts, performance measures included for assessing contractor performance, and incentives/consequences for inadequate performance) and provide training on best practices.

The State Auditor's Office has contracted with FCS Group to help collect and analyze contract information. Results are expected to be released in June 2011.

The contact in the State Auditor's Office is Kevin Greene, contract manager and project leader.

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What Is A Performance-based Contract?

Performance-based contracts identify expected deliverables, performance measures or outcomes. Payment is contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received.

Characteristics of a performance-based contract:

- Emphasize results related to output, quality and outcomes rather than how the work is performed;
- Specify deliverables, performance standards and/or an outcome orientation and clearly defined objectives and timeframes;
- Use quality assurance plans, measurable performance standards and/or outcomes;

- Provide performance incentives and/or consequences for non-performance; and
- Tie payment to deliverables, performance measures and/or outcomes.

Clarification:

Performance-Based Contracting Reports for Master Contracts

There may be some confusion about which master contracts agencies should include in their data on performance-based contracting and which should be excluded. The exclusion for master contracts covers only contracts where the contractor and scope of work are defined in the master contract.

Master Contracts to Include in Agency Reporting

You should include a contract/work order/task order in your agency's data if your agency:

1. Chose the vendor providing the service (even from a pre-qualified list of vendors),
2. Determined the scope of work for the work order/task order (even if there is an overarching master contract in place that provides standard terms and conditions but not the specific scope of work), and
3. Has the responsibility for making sure the service is provided before payment.

This type of contracting process, where there is a pre-qualified list of vendors to pick from that has already agreed to standard terms and conditions but not to a specific scope of work, is commonly called a "second tier master contract" when a central purchasing authority provides the list for use by all state agencies or a "convenience contract" when an agency sets it up internally to streamline future contract development. It is *not* covered by the master contract exclusion, and it should be reported on by your agency.

Master Contracts to Exclude from Agency Reporting

Agencies should not report activity under master contracts where both the terms and conditions and the specific scope of work are set in the master contract. For those master contracts, the agency that created the master contract will report it. To assist agencies with consistently reporting master contracts, GA, DIS, DOP, OFM, and Printing have agreed to compile a list of master contracts for services that should be excluded from agency reporting.

Applicable policies

- [SAAM 15.40](#): Personal Service Contracts - Contract Award, Management and Monitoring
- [SAAM 16.20](#): Client Service Contracts - Contract Award, Management and Monitoring
- [Washington Purchasing Manual \(WPM\)](#) – General Administration/Office of State Procurement is current working on several updates and revisions to the WPM. The update will include the following language related to performance-based contracting. It is unclear when the next release will be ready to go out, but GA wants our customers to see an advance copy of the WPM guidance.

Glossary Entry in WPM

Performance-Based Contract

Source: SAAM

A written document detailing an agreement between parties and identifying expected deliverables, performance measures or outcomes with payment contingent on their successful delivery. Performance-

15.10.15

based contracts also use appropriate techniques, which may include, but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received.

New Entry in WPM

6.3.h Performance Based Contracting

In accordance with Executive Order [10-07](#) and effective the date of this edition of the WPM, all cabinet agency purchased services contracts under RCW [43.19](#) shall be performance-based. Non-cabinet agencies are encouraged to use performance-based contracting.

Purchased Services Contracts:

Requirements for purchased services contracts shall be consistent with the requirements outlined in SAAM sections:

- [15.40.20](#) Performance Based Contracts
- [15.40.25](#) Performance Measures and Outcomes
- [15.40.30c](#) Fiscal considerations and payment methods

Goods Contracts:

Most contracts for the purchase of goods under RCW 43.19 already contain performance-based contracting techniques, such as:

- Performance-based product specifications.
- Vendor performance requirements.
- Performance-based delivery terms.
- Performance-based verification of receipt of goods.
- Any other applicable performance-based requirement or term.
- In the event the contractor fails to meet any of the terms, the consequence is the customer may withhold payment to the contractor.

In those cases where it would not be cost-effective for the state to use a performance-based contract, agencies may exempt a contract from the performance-based requirements. All exemptions must be approved in writing by the agency director before the agency enters into the contract.

Guidance documents

- [Performance-based contracting questions and answers](#) (3/22/11)
- [GMAP performance-based contracting reporting plan](#) (3/24/11)
- [Office of Financial Management Performance-Based Contracting webpage](#)

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